

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

THE SECRETARY OF VETERANS
AFFAIRS, AN OFFICER OF THE UNITED
STATES OF AMERICA, C/O DIRECTOR
OF THE VA REGIONAL OFFICE, a foreign
corporation,

Plaintiff,

vs.

LEVI HILL and REBECCA G. HILL, a
married couple,

Defendants,

vs.

COUNTRYWIDE HOME LOANS, INC., a
New York Corporation, *et al.*,

Third Party Defendants.

**ORDER and
MEMORANDUM DECISION**

Case No. 2:11-cv-232 CW

This court “must, *sua sponte*, satisfy itself of its power to adjudicate in every case and at every stage of the proceedings.” *State Farm Mut. Auto. Ins. Co. v. Narvaez*, 149 F.3d 1269, 1270-71 (10th Cir. 1998). Here, Plaintiff has attempted to remove an unlawful detainer action that Plaintiff brought under Utah state law and that Plaintiff filed in Utah state court.

The first obvious problem with Plaintiff’s notice is that 28 U.S.C. § 1441 only allows

“the defendant” to remove an action from state court. Plaintiff is the plaintiff in the Utah action. That Plaintiff is a counterclaim defendant in the Utah state action appears to be immaterial. *See Shamrock Oil & Gas Corp. v. Sheets*, 313 U.S. 100, 106 (1941) (removal statute does not allow removal by plaintiffs in the state court action, even if they are countersued).

Moreover, Plaintiff alleges that there is diversity in the action. While Plaintiff admits (albeit implicitly and not expressly) that one of the third party counterclaim defendants is non-diverse, Plaintiff argues that this individual’s presence should be ignored because the counterclaims against him are without merit. At this point, Plaintiff’s assertion is nothing more than a legal conclusion.

For these reasons, Plaintiff is hereby ORDERED to show cause why this action should not be remanded to Utah state court. Plaintiff’s response is due within 10 days of the date of this Order. If any other parties wish to respond, they may do so 10 days after Plaintiff files its response.

SO ORDERED this 14th day of March, 2011.

BY THE COURT:



Clark Waddoups
United States District Judge